

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES JONES	:	CIVIL ACTION
	:	
v.	:	
	:	
MARTIN F. HORN, <u>et al.</u>	:	NO. 97-3921

**MEMORANDUM AND ORDER**

BECHTLE, J.

NOVEMBER 25, 1997

Presently before the court are plaintiff James Jones' ("Jones") Motion for the Appointment of Counsel, Request for Delay/Stay and Opposition Response to Defendants' Answer to the Supplemental Complaint. For the reasons set forth below, the court will deny the Motion for the Appointment of Counsel and will order Defendants to show cause why Jones should not be granted the relief requested in the Request for Delay/Stay and the Opposition Response to Defendants' Answer to the Supplemental Complaint.

**I. BACKGROUND**

This is a prisoner civil rights action against numerous administrative personnel and correctional officers ("Defendants") at the State Correctional Institution at Frackville ("SCI-Frackville").<sup>1</sup> On June 9, 1997, Jones filed a Complaint alleging

---

1. This court has original jurisdiction over Plaintiff's claims because they arise under the federal civil rights laws. 28 U.S.C. §§ 1331, 1343. The court has supplemental jurisdiction over Plaintiff's state law claims because they form part of the  
(continued...)

that several guards used unreasonable force in restraining him in his cell. On July 30, 1997, Jones filed a Supplement Complaint. In his Supplement Complaint, Jones additionally alleges that certain correctional officers, prison staff and administrative personnel deprived him of his constitutional rights and engaged in other forms of harassment in retaliation for Jones' legal activities. Specifically, Jones alleges that Defendants violated his First, Eighth and Fourteenth Amendment rights and various state laws. The factual allegations in Jones' Complaint and Supplement Complaint include that, inter alia: the guards hit him with a nightstick, twisted his limbs backwards and intimidated him while he was handcuffed in his cell; guards repeatedly woke him by kicking his door and hitting the bars of his cell; guards made derogatory references to Jones' race and religious views; guards engaged in excessively repetitive searches of Jones' cell; prison officials denied him access to the law library; prison officials read his legal mail, failed to mail out or deliver legal documents and otherwise interfered with his access to legal materials and assistance. Jones requests injunctive relief and compensatory and punitive damages.

Jones has filed three motions with the court. On October 2, 1997, Jones filed a Motion for the Appointment of Counsel. Also on October 2, 1997, Jones filed a Request for

---

1. (...continued)  
same case or controversy as the federal claims. 28 U.S.C. § 1367(a)(1).

Delay/Stay. In that second motion, he requests the court require Defendants to allow him to conduct certain discovery activities, including correspondence with other inmates to obtain affidavits related to his case.<sup>2</sup> The third motion, filed that same day, was an Opposition Response to Defendants' Answer to the Supplemental Complaint, which also appears to be, in part, an additional request for injunctive relief. In this Memorandum and Order, the court will address all three motions.

For the reasons set forth below, the court will deny the Motion for the Appointment of Counsel and will order Defendants to show cause why Jones should not be granted the relief requested in the Request for Delay/Stay and the Opposition Response to Defendants' Answer to the Supplemental Complaint.

## **II. DISCUSSION**

### **A. Motion for the Appointment of Counsel**

There is no constitutional or statutory right to the appointment of counsel in a civil action. Tabron v. Grace, 6 F.3d 147, 153 (3d Cir. 1993) cert. denied, 510 U.S. 1196 (1994). However, the court may, at its discretion, "request an attorney to represent any person unable to afford counsel." 28 U.S.C. § 1915(e)(1). When determining whether to grant a request for

---

2. Also in that motion, Jones requests the court's assistance on consolidating "all" cases arising from S.C.I. Frackville. Previously, Jones requested such assistance by letter, filed September 9, 1997. On November 10, 1997, the court entered an order denying Jones' request to consolidate the S.C.I. Frackville cases. Therefore, the court will not address the issue here.

appointment of counsel, the court must consider several factors in its decision. Tabron, 6 F.3d at 154, 155.

First, as a threshold matter, the court must determine that the plaintiff's claim has merit in fact and law. Id. at 155. If the claim satisfies this requirement, the court then considers the following factors:

- (1) the plaintiff's ability to present his or her own case;
- (2) the complexity of the legal issues;
- (3) the degree to which factual investigation will be necessary and the ability of the plaintiff to pursue such investigation;
- (4) the amount a case is likely to turn on credibility determinations;
- (5) whether the case will require the testimony of expert witnesses;
- (6) whether the plaintiff can attain and afford counsel on his own behalf.

Parkham v. Johnson, No. 95-3623, 1997 WL 573185, at \*4 (3d Cir. Sept. 17, 1997)(citing Tabron, 6 F.3d at 155-56, 157 n. 5). The Third Circuit also noted that "[t]his list of factors is not exhaustive, but instead should serve as a guidepost for the district courts." Id. The court also must consider the growing number of prisoner civil rights actions, the lack of funding and the limited number of attorneys willing to undertake such representation without compensation. Tabron, 6 F.3d at 157.

At the heart of Jones' claim is an excessive force allegation. Jones characterizes his claims as arising under the First, Eighth and Fourteenth Amendments and various state laws. The facts as alleged in Jones' complaint show that, if true, at least some of the claims appear to be have merit. While not

every instance of alleged misconduct in Jones' over one hundred paragraphs of factual allegations may be actionable, the complaint does not appear to be wholly frivolous on its face. In addition, Jones has filed with the court several affidavits of fellow inmates which appear to support some of his allegations. Relying on Jones' pleadings and granting him the leniency accorded pro se plaintiffs, the court will proceed under the presumption that Jones' case has merit in fact and law and will evaluate the remaining factors.

#### **1. Plaintiff's Ability to Present His Own Case**

Jones appears to be competent to represent himself. While he does not appear to have any legal training, he has proved himself able to articulate his claim and communicate with the court. In his Memorandum of Law in support of the motion, he proves himself quite capable of synthesizing the relevant facts with applicable case law and arguing legal points on his own behalf. He appears to understand the factual issues he must show to make out his claims. Additionally, he has been able to obtain several affidavits supporting his claims. These observations show Jones' ability to present his own case and weighs against appointment of counsel.

#### **2. Complexity of the Legal Issues**

This case does not appear to involve complex legal issues. Jones argues that the large number of defendants and the fact that he has requested a jury trial weighs toward appointment

of counsel. However, the court notes that there are no complex issues of law, evidence or burdens of proof in this case. The issues in the legal questions presented are relatively clear. Therefore, this factor weighs against appointment of counsel.

**3. Degree to Which Factual Investigation Will Be Necessary and the Ability of the Plaintiff to Pursue Such Investigation**

The court believes that Jones will be able to properly investigate this case on his own. In his Memorandum of Law in support of his motion for appointment of counsel, Jones argues that he is unable to investigate his claim because he is in punitive segregation and cannot locate possible witnesses. Jones also argues that due to the segregation, he is unable to use the law library to the same degree as other inmates. The court notes that Jones has filed a motion concerning discovery issues, as will be addressed later in this Memorandum and Order. If Jones believes he is wrongfully being denied access to legal materials or witnesses, he may similarly request such specific relief. Although incarceration may disadvantage Jones, especially in light of his status in a segregated unit, the court believes that his discovery difficulties can be solved without appointing counsel. Therefore, it would be premature for the court to find that Jones is unable to conduct such discovery on his own behalf.

**4. The Amount a Case Is Likely to Turn on Credibility Determinations**

Jones argues that the case will turn on conflicting testimony. He notes that because his view and Defendants' view of the events at issue are in direct conflict, the case will be a "credibility contest." Jones has already obtained statements from witnesses that bolster his case, and continues to try to do so. Jones' and his supporting witnesses' incarceration may reflect negatively on their credibility. However, all cases turn on credibility determinations to some degree and the court finds that Jones' incarceration will not be unduly prejudicial to his own presentation of his case.

**5. Whether the Case Will Require the Testimony of Expert Witnesses**

The court does not expect that expert testimony will be required at trial.

**6. Whether the Plaintiff Can Attain and Afford Counsel on His Own Behalf**

It does not appear from the documentation before the court that Jones would be able to afford representation on his own behalf. However, as noted above, Jones appears to be fully capable of representing himself in this case and so appointment of counsel is not necessary.

**7. Conclusion**

Taking into consideration the remaining factors--the growing number of prisoner civil rights actions, the lack of funding and the limited number of attorneys willing to undertake

such representation without compensation--the court finds that this case does not present the sort of circumstances that warrant appointment of counsel. Some of the factors evaluated above may weigh toward appointment of counsel. However, when viewed in their entirety, the factors do not support the appointment of counsel. The court will deny the motion.

**B. Request for Delay/Stay and the Opposition Response to Defendants' Answer to the Supplemental Complaint**

Jones' Request for Delay/Stay appears to address discovery issues. Jones appears to request that he be allowed to correspond with certain inmates to obtain affidavits and for relief in his discovery. In his Opposition Response to Defendants' Answer to the Supplemental Complaint, Jones also appears to request additional injunctive relief. The court will enter an Order for Defendants to show cause why the court should not grant the relief Jones requests in these motions.

**III. CONCLUSION**

For the foregoing reasons, the court will deny the Motion for the Appointment of Counsel and will order Defendants to show cause why Jones should not be granted the relief requested in the Request for Delay/Stay and the Opposition Response to Defendants' Answer to the Supplemental Complaint.



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES JONES	:	CIVIL ACTION
	:	
v.	:	
	:	
MARTIN F. HORN, <u>et al.</u>	:	NO. 97-3921

**ORDER**

AND NOW, TO WIT, this 25th day of November, 1997, upon consideration of plaintiff James Jones' Motion for the Appointment of Counsel, IT IS ORDERED that said motion is DENIED.

Upon consideration of plaintiff James Jones' Request for Delay/Stay and Opposition Response to Defendants' Answer to the Supplemental Complaint, IT IS ORDERED that Defendants have fifteen (15) days from the date of this Order to show cause why the requested relief shall not be granted.

---

LOUIS C. BECHTLE, J.